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06 SEP 2007

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In re Application of:
CARON, Laurent : DECISION ON REQUEST FOR
U.S. Application No.: 10/593,944 : EXPRESS ABANDONMENT
PCT No.: PCT/FR2005/000615 :
International Filing Date: 15 March 2005 :
Priority Date: 06 April 2004 :
Atty Docket No.: FR-AM 2023 NP :
For: NON FLAMMABLE :
COMPOSITION WHICH CAN BE :
USED AS A BLOWING AGENT :
:

This decision is issued in response to the request for "Express Abandonment" filed 30 October 2006 and the correspondence filed 16 February 2007 requesting that the request for "Express Abandonment" be ruled ineffective. No petition fee is required.

BACKGROUND

On 15 March 2005, applicants filed international application PCT/FR2005/000615. The international application claimed a priority date of 06 April 2004, and it designated the United States. On 17 November 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 06 October 2006.

On 22 September 2006, above-named counsel filed a Transmittal Letter for entry into the national stage in the United States for PCT/FR2005/000615, accompanied by, among other materials, the authorization to charge Deposit Account No. 01-2717 for \$900 in fees (including the \$300 basic national fee), a preliminary amendment, a purported translation of the international application into English, and an unexecuted declaration and power of attorney. The Transmittal Letter indicated that it was a "First" submission under 35 U.S.C. 371(c). The application was assigned U.S. application number 10/593,944.

On 06 October 2006, above-named counsel filed a second Transmittal Letter requesting entry into the national stage in the United States for PCT/FR2005/000615, accompanied by, among other materials, an authorization to charge Deposit Account No. 01-2717 \$900 in fees (including the \$300 basic national fee), a preliminary amendment, a second translation of the international application into English, and an unexecuted declaration and power of attorney. The 06 October 2006 submission, like the materials previously filed on 22 September 2006, indicated

that it was a "First" submission under 35 U.S.C. 371(c). The materials filed 06 October 2006 were therefore tentatively assigned a separate U.S. application number, 11/547,833.

There can only be a single U.S. national stage application with respect to a given international application and, based on counsel's 22 September 2006 filing, the present U.S. application (10/593,944) had been initiated as the U.S. national stage of PCT/FR2005/000615. Accordingly, the materials filed 06 October 2006, directed as they were to the U.S. national stage of PCT/FR2005/000615, have been placed in the present application file. The duplicative fees charged with respect to applicants' 06 October 2006 submission have been refunded to Deposit Account No. 01-2717, and the U.S. application number tentatively assigned to such materials (11/547,833) has been assigned to a separate, unrelated application. No further correspondence with respect to the present application should be directed to U.S. application number 11/547,833.

On 30 October 2006, above-named counsel filed the "Express Abandonment" considered herein, requesting express abandonment of the present application under 37 CFR 1.138.

On 07 November 2006, the USPTO mailed a "Notice Of Abandonment" acknowledging the letter of Express Abandonment.

On 16 February 2007, above-named counsel filed herein correspondence which included a request to treat the "Express Abandonment" as ineffective. The correspondence included a copy of the English translation and preliminary amendment filed 06 October 2006, and a statement that such translation should replace the English translation filed 22 September 2006 (which was subsequently found to contain defects).¹

DISCUSSION

Pursuant to 37 CFR 1.138(b), an attorney signing a request for express abandonment must be the appointed attorney of record. See MPEP section 711.01: "The applicant (acquiesced in by an assignee of record), or the attorney/agent of record, if any, can sign an express abandonment."

As noted above, the present application does not include an executed Power of Attorney or declaration appointing above-named counsel as attorney of record; rather, the papers filed herein were submitted by counsel in a representative capacity under 37 CFR 1.34. As set forth in MPEP section 402, "a person acting in a representative capacity may not sign ... a request for express abandonment without filing a continuation application" (no such continuation application has been filed here).

Based on the above, the request for express abandonment filed by above-named counsel on 30 October 2006 is not effective under 37 CFR 1.138(b). The "Notice of Abandonment" mailed 07 November 2006, based as it was on the ineffective request for express abandonment, is appropriately vacated.

¹ A review of the English translation filed 22 September 2006 reveals at least one apparent defect: the published international application included ten claims, while the English translation filed 22 September 2006 included only nine claims. The revised translation filed 06 October 2006 contains ten claims.

CONCLUSION

For the reasons discussed above, the request for express abandonment of the present application filed 30 October 2006 is **DISMISSED** as ineffective (as requested by above-named counsel in the correspondence submitted 16 February 2007).

The "Notice of Abandonment" mailed 07 November 2006 is hereby **VACATED**.

The materials filed on 06 October 2006 and tentatively assigned a separate U.S. application number (11/547,833) have been placed in the present application file, and the duplicative fees submitted on such date have been refunded.

The present application, 10/593,944, is the U.S. national stage of PCT/FR2005/000615, filed 15 March 2005.

No further correspondence with respect to the present application should be directed to U.S. application number 11/547,833.

This application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 06 October 2006.



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